

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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KENNETH KING,

Plaintiff,

-against-

CITY OF NEW YORK, et al.,

Defendants.

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MEMORANDUM

AND ORDER

13 CV 4311 (AMD) (RML)

LEVY, United States Magistrate Judge:

Joseph Macy, counsel for plaintiff, has filed a letter application to compel non-party Bryan Teichman (“deponent”) to appear for a deposition to be held on July 25, 2016. (See Plaintiff’s Motion, dated June 8, 2016 (“Pl.’s Mot.”), at 2.) As set forth in the application, on March 17, 2016, deponent was served with a subpoena to appear at a deposition to be held on April 20, 2016. (Id. at 1.) Deponent failed to appear. (Id.) On May 9, 2016, deponent was personally served with a subpoena to appear for a deposition to be held on June 6, 2016, along with a witness fee and a copy of the court’s April 20, 2016 minute entry advising deponent that a motion for sanctions may result if he does not comply. (Id.; see Affidavit of Service of Norberto Maldonado, sworn to May 11, 2016; Minute Entry, dated May 20, 2016.) Deponent did not appear and, reached by telephone, stated that he had not received notice of the deposition. (Pl.’s Mot. at 1.) Deponent then failed to follow up with counsel regarding rescheduling. (Id. at 1-2.)

Rule 45 of the Federal Rules of Civil Procedure states that an attorney, as an officer of the court, may issue a subpoena on behalf of a court in which the action is pending. See FED. R. CIV. P. 45(a)(2), (3). If a properly served person “fails without adequate excuse to obey the subpoena or an order related to it,” the court may hold that person in contempt. FED. R. CIV. P. 45(g); see Sheet Metal Workers’ Nat’l Pension Fund v. Rhb Installations, Inc., No. 12 CV 2981, 2016 WL 128153, at *2 (E.D.N.Y. Jan 12, 2016). Having examined the affidavit of

service attached as exhibit A to Mr. Macy's application, the court finds that the May 9, 2016 subpoena was valid and properly served upon deponent.

Deponent, Bryan Teichman, is hereby ordered to comply with that subpoena. Deponent must immediately contact Mr. Macy's office to arrange for a mutually convenient date to give testimony. Deponent must contact Mr. Macy's office within seven days of receipt of this order, and must appear for a deposition to be held on or before July 25, 2016.

Deponent is warned that if he fails to comply with this order, he could be subject to contempt proceedings for failure to respond to the subpoena and this order. If he is found to be in contempt of the subpoena or this order, he could be subject to sanctions, including imposition of a monetary fine, attorney's fees, and costs. If the failure to comply continues, the court could issue a warrant of arrest for failure to comply with a court order.

Plaintiff's counsel is directed to personally serve a copy of this order on deponent and to file proof of service.

SO ORDERED.

Dated: Brooklyn, New York
June 30, 2016

/s/
ROBERT M. LEVY
United States Magistrate Judge